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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

JOHN MARSHALL COURTS BUILDING

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PHILIP MORRIS COMPANIES, INC., et al.,

Plaintiffs,

-against-

At Law No. 760CL94X 00816-00

AMERICAN BROADCASTING COMPANIES, INC., et al.,

Defendants.

----------x

June 29, 1995
10:16 a.m.

HIGHLY CONFIDENTIAL - TRADE SECRET

Videotaped Deposition of DAVID ERNEST MERRILL, taken by Defendants, pursuant to Subpoena, at the offices of McGuire Woods Battle & Boothe, Esqs., 901 East Carey Street, Richmond, Virginia before Lee A. Bursten, a Registered Professional Reporter and Notary Public within and for the Commonwealth of Virginia.

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RICHARD HARTDEGREE

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ERRATA SHEET

Corrections or changes to the deposition testimony of:

DAVID ERNEST MERRILL - Volume 1

Page	Line	Correction
5	19	Change "Tires" to "Fibers"
5	19	From "Tires" to "Fibers"
6	17	Change "West Ave." to "WESTAB"
8	19	Change "Centrifugation" to "Centrification"
10	6	Change "Centrifugation" to "Centrification"
12	11	Add "stockroom" after ", the"
14	21	After "No" add "anybody --"
17	10	Change "Had" to "Have"
17	10	From "Had" to "Have"
17	25	Change "they could" to "could they"
18	7	After "machines" add "that"
18	7	Insert "that" after "new machines"
18	8	From "and" to "then"
20	11	Change "Reed" to "Reid"
20	17	After "was" add "officially"
20	17	Insert "officially" between "was" & "June"
20	24	From "did" to "do"
21	4	Change "Reed" to "Reid"
21	5	Change "Reed" to "Reid"
21	7	Change "Reed" to "Reid"
27	3	From "gave me. Are there" to "gave me, which is that there are"
27	3	From "in" to "based strictly on"
30	20	After "again," add "-- I can't --"
30	20	Insert "I can't," between "again" and "when"
44	10	Insert "that" between "anyone" and "you"

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ERRATA SHEET

Corrections or changes to the deposition testimony of:

DAVID ERNEST MERRILL - Volume 1

Page	Line	Correction
46	11	Change "Reed" to "Reid"
46	15	Change "Reed" to "Reid"
46	25	Change "Reed" to "Reid"
47	24	From "Depend --" to "Again"
48	11	From "are --" to "or"
58	8	Change "cost" to "does"
58	8	Delete "they"
58	8	From "cost" to "does"
58	8	From "cost" to "does"
58	19	From "You" to "He"
59	3	Delete "it"
67	19	After "out." add "I was simply just asking that you not wipe out."
87	17	After "that" add "it"
88	8	Insert "Yes," before "My Department"
92	2	Add "I do not." after "No."
111	7	Add "just" after "reporter has"
111	7	After "has" add "just"
111	9	After "bears" add "the bate stamp"
111	9	Insert "the bates stamp" between "bears" and "PA"
115	20	After "sentence" add "says"
116	5	From "No." to Mmm-mm."
116	22	Change "whether" to "what"
116	22	From "whether" to "what"
117	3	From "smaller" to "small letter"
121	21	After "trial run," add "or"
121	22	Add "if you could?" after "specific?"

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ERRATA SHEET

Corrections or changes to the deposition testimony of:

DAVID ERNEST MERRILL - Volume 1

Page	Line	Correction
121	22	After "specific" add ", if you would"
123	12	From "stamp" to "stamping"
125	13	After "two" add "I don't"
125	14	After "these" add "MR. KILLORY: Okay, okay."
125	16	From "One" to "So, one"
127	11	Add "I have" before "no idea."
127	11	From "No idea." to "I have no idea."
128	8	Insert "that" between "document" and "you"
129	3	Change "proceeded" to "proceed"
129	4	Change "with the" to "with document"
129	12	After "considered" add "MR. NUNLEY: Well, so the --"
142	22	Omit "--the"
145	25	From "these" to "those"
151	10	Change "from" to "to"
158	21	From "12/14/91" to "12/4/91"
161	6	Change "it" to "them"
165	20	After "with" add "some"
165	20	Insert "some" between "with" and "attached"
166	22	Delete "also"
166	22	Omit "also,"
173	9	Before "Did" add "At that time"
173	9	Insert "At that time," before "Did either"
173	10	Delete "at that time"
174	3	Change "to participate on" to "participating in"
175	24	From "but" to "that"
176	16	Change "those" to "these"

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ERRATA SHEET

Corrections or changes to the deposition testimony of:

DAVID ERNEST MERRILL - Volume 1

Page	Line	Correction
176	21	After "document" add "WITNESS: Oh, I'm sorry."
176	21	After "document" add "WITNESS: Oh, I'm sorry."
176	22	After "your" add "prior"
176	22	After "your" add "prior"
176	22	From "recognized" to "mentioned"
176	22	From "recognized" to "mentioned"
177	3	From "but" to "that" -?
177	3	From "is" to "was"
178	17	Change "FA" to "PA"
181	11	Delete "before"
181	15	From "already" to "also"
181	15	Change "already" to "also"
181	19	Before "I" add "A difference of view."
184	4	Add "measurably" after "does not"
184	7	Change "products" to "brands"
184	7	From "products" to "brands"
186	10	Delete "any"
186	11	After "request in" add "the course of"
187	2	From "in" to "and"
187	2	Delete "it"

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10:15:46 THE VIDEO OPERATOR: This is the certified legal video specialist speaking, Shelley Sanders of Action Legal Video, 132 Nassau Street, New York, New York. We are here on this day, June 29, 1995, at the time continuously recorded on the videotape, the time being 10:16:06, at the offices of McGuire, Woods, Battle & Boothe, located at 901 East Carey Street, Richmond, Virginia, to take the videotape deposition of David E. Merrill on behalf of the defendants in the matter of Philip Morris versus ABC.

Will counsel please introduce themselves.

MR. KILLORY: Joseph E. Killory of Wilmer, Cutler & Pickering for ABC.

MR. NUNLEY: Chip Nunley and Vineet Bhatia for plaintiffs, Philip Morris.

THE VIDEO OPERATOR: The witness may be sworn.

D A V I D E R N E S T M E R R I L L, residing at [DELETED] [DELETED] having been first duly sworn by the Notary Public (Lee A. Bursten), was examined

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and testified as follows:

EXAMINATION BY MR. KILLORY:

10:16:54 Q. Good morning, Mr. Merrill.

10:16:54 A. Good morning.

10:16:56 Q. As you heard in the introduction, my name is Ted Killory. I represent ABC, defendants in the lawsuit brought by Philip Morris. My purpose here is to ask you some questions today in this deposition.

10:17:06 Have you ever had your deposition taken before?

10:17:08 A. No, I have not.

10:17:10 Q. Could you state your full name and address for the record, please.

10:17:18 A. David Ernest Merrill, [DELETED]

10:17:20

10:17:24 Q. If in the course of this deposition there are any questions that you do not understand, please do not hesitate to tell me that and I will attempt to clarify. Do you understand that?

10:17:36 A. Yes, I do.

10:17:38 Q. If there is any point at which you feel like you have given an answer that was

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incorrect in some fashion or you want to correct, please let me know immediately and I'll let you correct that on the record. Do you understand that?

A. Yes.

Q. I would like to ask you some general background questions. What is your educational history, Mr. Merrill?

A. I graduated from Northeastern University in Boston, Massachusetts, with a bachelor of science degree in chemical engineering.

Q. When was that?

A. 1972.

Q. Following graduation, what was your first full time employment?

A. My first full time employment was with Firestone Synthetic Tires, Hopewell, Virginia.

→ Fibers.

Q. Briefly, what were your -- what was your job? What were your responsibilities, I should say.

A. I was classified as a junior process engineer, and over the time period that I was at

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10:18:36 Firestone, I had responsibility for spinning of
10:18:42 nylon, draw twisting, and texturizing of nylon
10:18:42 fibers.
10:18:44 Q. How long did you remain with
10:18:44 Firestone?
10:18:46 A. One year.
10:18:48 Q. What was your next position after
10:18:48 that?
10:18:52 A. I moved from Firestone to Philip
10:18:54 Morris in June of 1973.
10:18:58 Q. What was your first position with
10:19:00 Philip Morris?
10:19:02 A. My first position with Philip Morris
10:19:06 was called shift supervisor, expanded tobaccos.
10:19:12 Q. At what facility was that?
10:19:18 A. West Ave. annex on Everett Street and
10:19:20 Commerce Road. WESTAB
10:19:24 Q. Your responsibilities as shift
10:19:26 supervisor for expanded tobacco were what?
10:19:32 A. I supervised a group of hourly
10:19:34 employees engaged in the process of manufacturing
10:19:40 expanded tobacco and expanded stems.
10:19:46 Q. How long did you hold that position?
10:19:50 A. I was there from June of '73 to

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February of '75.

Q. And in February of '75 did you take another position with Philip Morris?

A. February of '75 until November of '76, I was in the primary processing portion of the new manufacturing center.

Q. And your position there?

A. Supervisor, expanded stems.

Q. Did your responsibilities in terms of supervising expanded stem production there change from what they had been in the earlier position of shift supervisor at the Everett Street plant?

A. No, they did not.

Q. In November of '76, what was your next position?

A. In November of 1976, I went to Hopewell Processing, which is now called Park 500.

Q. And your position there?

A. Process engineer.

Q. Do you have any advanced degrees in engineering?

A. No, I do not.

Q. But you consider yourself an

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engineer; is that correct?

A. That's correct.

Q. How long did you stay as a processing engineer at the Hopewell facility?

A. Until February 1978.

Q. What position did you assume then?

A. For approximately ten days I assumed the position of production superintendent.

Q. Let me step back to your processing engineer position. What were your responsibilities?

MR. NUNLEY: It's process engineer.

MR. KILLORY: Process engineer, excuse me.

A. What were my duties? As process engineer I functioned as an engineer, reviewing and evaluating different aspects of the process. Evaporation, centrif~~ugation~~ication, fluid flow.

Q. Is that process the same process that is now done at Park 500?

MR. NUNLEY: Objection as to form. Vague.

Q. The process that you're supervising -- let me backtrack. You said the

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Hopewell plant was a predecessor to the Park 500 plant; is that correct?

A. In name only, yes.

Q. The process that was done at the Hopewell plant I take it is not the same process that is now done at the Park 500 plant?

MR. NUNLEY: Objection as to form. Vague.

Q. Do you understand the question?

A. I'm not sure.

Q. You said that the Park 500 plant is a successor in name only. What did you mean by that?

A. The name was changed, and I don't remember the exact date, but the name was changed from Hopewell Processing to Park 500.

Q. So the facility formerly known as Hopewell Processing is the same facility now known as Park 500?

A. That's correct.

Q. What was the process you were overseeing at the Hopewell facility?

MR. NUNLEY: Objection as to -- I don't know that his testimony is that he was

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10:23:22 overseeing a process.

10:23:46 Q. You had testified that you were

10:23:50 reviewing and evaluating different aspects of the

10:23:54 process. "Evaporation," I think the next word is

10:23:56 supposed to be "centrif~~ugation,~~ication" "fluid flow."

10:23:58 My question is simply, what process were you

10:23:58 referring to?

10:24:02 A. Reconstituted sheet.

10:24:06 Q. And that's the process also known as

10:24:08 the RL process; is that correct?

10:24:08 A. That's correct.

10:24:16 Q. You said you held the position in

10:24:18 February '78 of production superintendent for

10:24:20 approximately ten days; is that correct?

10:24:22 A. That's correct.

10:24:24 Q. What were the circumstances that led

10:24:28 to holding that position for that period of

10:24:28 time?

10:24:32 A. I -- wait a minute. The

10:24:36 superintendent of mechanical maintenance quit,

10:24:38 and I was put in that position.

10:24:44 Q. As an interim measure; is that

correct?

10:24:44 A. That's correct.

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10:24:50 Q. And this, again, was at the Hopewell facility?

10:24:52 A. Yes, it was.

10:24:56 MR. NUNLEY: So the record is clear, I think at that point it was probably called the Park 500 facility.

10:25:00 MR. KILLORY: Okay.

10:25:02 Q. Do you know when the name changed to Park 500?

10:25:04 A. I don't remember the exact date.

10:25:08 Q. Following your ten-day stint as superintendent, what was your next position?

10:25:14 A. Superintendent, mechanical maintenance.

10:25:16 Q. In that capacity, were you responsible for mechanical maintenance for the entire facility, Park 500 facility?

10:25:26 A. That's correct.

10:25:36 Q. How long did you hold that position?

10:25:40 A. Approximately three months.

10:25:46 Q. So in May of 1978 you assumed a new position?

10:25:46 A. That's correct.

10:25:48 Q. And what was that?

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10:25:52 A. Manager of maintenance and engineering, Park 500.

10:26:00 Q. How did the position of manager of maintenance and engineering differ from that of superintendent of mechanical operations?

10:26:10 A. The superintendent of mechanical maintenance was responsible for the machine shop and the millwrights that worked in the facilities. As manager I was responsible for the superintendent of mechanical maintenance, the Stockroom superintendent of electrical maintenance, a group of engineers, and the boiler house operations, and a general labor crew.

10:26:42 Q. Until when did you hold that position as manager of maintenance and engineering?

10:26:50 A. Until November of 1982.

10:26:56 Q. And in November of '82 what position did you assume?

10:27:00 A. I went to the engineering department as manager of special projects.

10:27:14 Q. Just so the record is clear, when you say "engineering department," would that be the engineering department at Park 500?

10:27:22 A. I went to the central engineering

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10:27:24 department for Philip Morris U.S.A.

10:27:32 Q. In terms of structure, when you

10:27:34 worked as manager of maintenance and engineering

10:27:42 in May of '78 at Park 500, were you part of the

10:27:42 Philip Morris engineering department?

10:27:44 A. No.

10:27:50 Q. What were your duties beginning in

10:27:54 November '82 in the engineering department?

10:28:00 A. I was manager of special projects,

10:28:04 and the major project that I had was working on

10:28:08 improving the efficiency and product quality of

10:28:10 stemmed tobacco.

10:28:28 Q. Any other special projects that you

10:28:28 can recall?

10:28:36 A. I was responsible for energy

10:28:46 consumption, did classes on effective

10:28:50 presentations, budgeting, planning.

10:29:00 Q. Until when did you hold the position

10:29:02 as manager of special projects?

10:29:04 A. Until February of '86.

10:29:12 Q. In the course of your work from

10:29:14 November '82 through February '86 in the

10:29:16 engineering department, did you have interaction

10:29:18 with people at the Park 500 facility?

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10:29:20 A. No.

10:29:30 Q. One of the special projects you worked on while you were in the engineering department was classes in effective presentations; is that correct?

10:29:38 A. That's correct.

10:29:40 Q. What is that?

10:29:44 A. Teaching people how to present information effectively, how not to be nervous, and what types of media to use, flip charts better than overheads, sometimes slides are better than overheads, sometimes overheads are the media that's preferred. Whatever.

10:30:02 Q. Was there any particular engineering bent to those presentations?

10:30:06 MR. NUNLEY: Objection as to form.

10:30:08 A. I don't quite understand the question.

10:30:10 Q. Were they engineering-specific, or --

10:30:12 A. No. anybody-- I mean, it was just a general format of how to give an effective presentation.

10:30:20 Q. In February of '86, you took a new position. What was it?

10:30:24 A. Manager, cigarette manufacturing

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development.

10:30:34 Q. What department of Philip Morris was that in?

10:30:34 A. Still in the engineering department.

10:30:36 Q. Your office was located in what facility at that time?

10:30:50 A. My office has been in the operations center since November of '82.

10:30:58 Q. And your responsibilities as manager of cigarette manufacturing and development were what?

10:31:10 A. Part of our responsibility was to try and utilize existing technologies and adapt them for improvement in the operation of manufacturing cigarettes.

10:31:14 Q. What are some examples of that?

10:31:20 A. Probably the best example of that was we worked with a vision company to utilize a video camera and a computer to inspect finished packs of cigarettes for defects.

10:31:28 Q. And that technology was adopted by Philip Morris?

10:31:36 A. Modified and adopted.

10:31:40 Q. Any other projects that you can

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recall?

A. Automatic material handling.

Q. What is that?

A. In manufacturing cigarettes, a lot of the work is manual. You're handling large reels of paper, foil, and on the higher speed machines, they get used up very quickly, so it becomes a very tedious task.

So part of the group's job was to look for ways of having some robot or robotic device be able to change those reels of paper so it didn't become quite so tedious.

Q. Any other projects?

A. Many, but I can't really remember any specifics.

Q. In the inspection of the final product, which you referred to in your prior answer, what was Philip Morris inspecting for?

A. Packaging defects.

Q. By "packaging" you mean literally the exterior packaging of the product?

A. That's correct. For instance, on soft packs, if the foil was folded back, that's a defect. So it would check the foil, it would

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check glue lines.

Q. It didn't involve testing of the cigarettes, the contents of the cigarettes?

A. No.

Q. What was your next position?

A. In April of 1990 I was manager of new equipment evaluation.

Q. Were you still in the engineering department? Had you stayed in the engineering department throughout --

A. I've stayed in the engineering department throughout.

Q. It was manager of new equipment and --

A. Of new equipment. And that pertained to cigarette manufacturing equipment, makers and packers.

Q. Did any of the new equipment -- let me step back from this. What were your responsibilities as manager of new equipment?

A. Part of the responsibility was to evaluate new machines manufactured by the machine makers. Typically they were faster, so in that speed they could produce the cigarettes at the

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10:34:52 efficiencies that we wanted, to the quality
10:34:58 specifications that we wanted.
10:35:00 And the second part would be if a
10:35:06 machine was acceptable through the evaluation and
10:35:08 Philip Morris was going to purchase new machines,
10:35:12 and when we purchased these new machines that my group
10:35:14 had evaluated, ~~and~~ then part of my group's
10:35:16 responsibility was to follow that into the
10:35:18 factory and assist with the installation of those
10:35:22 machines; spare parts, specifications,
10:35:24 et cetera.
10:35:30 Q. Which facilities -- for which
10:35:34 facilities did you evaluate new equipment?
10:35:36 MR. NUNLEY: Objection as to form.
10:35:38 A. We just evaluated the equipment.
10:35:42 Q. By that I mean did you evaluate
10:35:46 equipment for the Park 500 facility?
10:35:50 A. No. We just evaluated cigarette
10:35:54 making and cigarette packing and the equipment
10:35:56 associated with that part of the process.
10:35:58 Q. Am I correct, the primary
10:36:02 processing -- I'm confused as to when you're
10:36:04 talking about the cigarette making process.
10:36:12 Cigarette making in the sense of the final

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packaging of the product?

MR. NUNLEY: Objection as to form.

A. The actual manufacture of the cigarette itself and the packaging thereof.

Q. What were the quality specifications that you were evaluating for that equipment?

A. I look at things such as standard deviation of rod weight. The cigarette is manufactured as one continuous rod, and then it's cut. So you evaluate the deviation of weight of the rod. That's probably the major item, actually.

Q. When you say evaluate the standard deviation, the amount by which the length of the rod varied in the samples you tested? Is that what you mean?

A. Length and weight.

Q. And weight, excuse me. Was the new equipment you were evaluating designed to try to limit that deviation as much as possible?

A. Basically the new machines were designed to go as fast as they could. So part of making sure that we wanted the machine was that it could produce the cigarette within the weight

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and length specifications that were required.

Q. In the position beginning in February of '86 as manager of cigarette manufacturing development, to whom did you report?

A. In the beginning I reported to Bill Taylor, who was the director. I'm not sure what Bill's title was. Bill was responsible for cigarette making and packing equipment. And Bill was promoted to director of engineering, and George Reed (Reid) replaced Bill as director of the department that I was in.

Q. How about as manager of new equipment, to whom did you report?

A. Paul Kaufman.

Q. And what was your next position?

A. My next position was (officially) June of '91 until present. That's director of environmental compliance and engineering.

Q. And as you stated before, that is within the engineering department; is that correct?

A. That's correct.

Q. And to whom ~~did~~ do you report in this position?

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10:39:42 A. Again, I reported to two people in my
10:39:44 tenure in this position. The first one was Bill
10:39:48 Taylor. And now it's George Reed again.
10:39:56 Q. And to whom does Mr. Reed now
10:39:58 report?
10:40:02 A. Mr. Reed reports to David Milby.
10:40:08 Q. What are your duties as director of
10:40:10 environmental compliance and engineering?
10:40:18 A. To ensure that Philip Morris has a
10:40:24 good compliance program for environmental issues
10:40:28 and that all the appropriate laws and regulations
10:40:36 are upheld within the corporation in terms of
10:40:40 permitting, reporting, et cetera.
10:40:42 Q. Is it more of a regulatory compliance
10:40:44 than a pure engineering position?
10:40:46 MR. NUNLEY: Objection as to form.
10:40:50 A. I'm not sure how to answer that
10:40:52 question.
10:40:56 Q. Do you understand what I mean by
10:40:58 "regulatory compliance"?
10:41:04 A. I understand what regulatory
10:41:04 compliance is, yes.
10:41:08 Q. We'll do it in building blocks. What
10:41:10 portion of your time is devoted to regulatory

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compliance?

A. Probably close to 70 percent.

Q. Just so the record is clear, to make sure we're both working from the same understanding of regulatory compliance, what's your understanding of regulatory compliance?

A. My understanding of regulatory compliance is to comply with the regulations. For example, when you make a change in a process, the regulations call for repermitting of that process. So as we find people are changing or are requiring to change processes, we must repermit those processes. So a considerable amount of time is spent on repermitting and reporting.

Q. Do any of the required permits with which you deal involve nicotine?

MR. NUNLEY: Objection as to form.

Q. The regulation of nicotine.

MR. NUNLEY: Same objection.

A. Could you -- I didn't catch all of that, I don't believe.

Q. You mentioned that permitting and repermitting is one part of your -- overseeing

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10:42:36 the permitting and repermitting process is one
10:42:38 part of your duties; is that correct?
10:42:40 A. That's correct.
10:42:42 Q. Do any of those permits involve
10:42:44 regulations concerning nicotine?
10:42:52 A. No, they do not.
10:42:54 Q. Are there any regulations that you're
10:42:56 aware of that govern the handling of nicotine?
10:43:00 MR. NUNLEY: Objection as to form.
10:43:08 A. What do you mean by "handling of
10:43:08 nicotine"?
10:43:10 Q. The transportation of nicotine.
10:43:12 A. Yes.
10:43:12 Q. What regulations are those?
10:43:16 A. DOT. Department of Transportation.
10:43:18 Q. And what do they require?
10:43:22 MR. NUNLEY: You mean with respect to
10:43:24 the transportation --
10:43:24 MR. KILLORY: The transportation of
10:43:26 nicotine.
10:43:32 A. The DOT rules and regulations for any
10:43:36 chemicals or any material that's considered
10:43:40 hazardous in which there are six general
10:43:42 categories, you follow the rules. I can't

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specifically sit here and state the specifics around nicotine.

Q. Do you need to get permits for transporting materials containing nicotine or other similar hazardous substances?

A. No.

Q. Are there any filings that you need to make under the DOT regulations in connection with the transportation of nicotine or other hazardous substances?

A. When you transport a hazardous substance, you have to manifest the transportation of the material, which includes its origin and its destination.

Q. Is your office responsible for preparing those manifests?

A. My office as well as the locations all prepare manifests. My office is not specifically chartered with writing all the manifests.

Q. The manifests are in many instances filled out by the people actually doing the transportation; is that correct?

A. That's correct.

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10:44:58 Q. Is your office responsible for maintaining file copies of manifests for the transportation of nicotine and other hazardous substances?

MR. NUNLEY: Objection as to form. I don't know that it's been established that Philip Morris transports nicotine. That's presumed in your question.

10:45:20 Q. Does Philip Morris transport nicotine containing substances?

MR. NUNLEY: Other than processed tobacco.

MR. KILLORY: Nicotine containing substances.

MR. NUNLEY: Including cigarettes --

MR. KILLORY: Including everything for now.

MR. NUNLEY: Do they transport cigarettes?

MR. KILLORY: That's the question.

10:45:36 A. Yes.

10:45:40 Q. Do you transport any substances containing nicotine other than finished product cigarettes? And by "you" I mean Philip Morris.

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A. We're excluding finished product?

Q. Exclude finished cigarettes.

A. Finished cigarettes. Yes.

Q. What substances are those?

A. Sometimes for testing, some materials are shipped from plant to plant. And the tobacco is shipped from plant to plant.

Q. When -- I'm sorry, did I interrupt? Are there other instances?

A. No.

Q. When those materials are shipped from plant to plant, is a manifest prepared?

MR. NUNLEY: Which materials?

MR. KILLORY: Tobacco or materials containing nicotine for testing.

Q. The materials you were referencing in your prior answer.

MR. NUNLEY: Ted, I think your question is vague from this standpoint. I don't know whether the witness understands you to be asking for example when RL is transported from Park 500 to the manufacturing center, if that would be included in your question, when ES or IS or any other tobacco product is transferred.

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MR. KILLORY: I'm asking the question ~~in~~ the terms the witness gave me. ~~Are there~~ times materials containing nicotine are transferred from plant to plant. Sometimes it's tobacco, sometimes it's in other forms.

MR. NUNLEY: Is that a question?

MR. KILLORY: No.

Q. The material you were referring to in your prior answer that is occasionally transported -- that is what my question is directed at, I think you understand that -- are manifests prepared when those materials are transferred from plant to plant, any of those materials?

A. I don't know.

Q. Manifests are -- are manifests maintained by your office of such transfers from plant to plant?

A. When manifests are required.

Q. Any time a manifest is required, a copy would be maintained by your office; is that correct?

A. That's correct.

Q. When you mentioned that nicotine is

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10:48:22 one of -- I believe you said six hazardous
10:48:24 material categories; is that correct?
10:48:24 A. No.
10:48:26 MR. NUNLEY: Objection as to --
10:48:28 that's a mischaracterization of the witness's
10:48:30 testimony.
10:48:56 Q. Does your office have any
10:49:00 responsibility for the wastewater treatment
10:49:02 facility at the Park 500 plant?
10:49:04 MR. NUNLEY: Objection as to form.
10:49:12 A. Depends on what you mean by
10:49:12 "responsibility."
10:49:14 Q. Do any part of the duties of your
10:49:20 office, of environmental and compliance --
10:49:22 environmental compliance and engineering, involve
10:49:26 the wastewater treatment facility at Park 500.
10:49:30 A. My department assists in obtaining
10:49:34 the NPDES permit for Park 500.
10:49:40 Q. NP -- I'm sorry.
10:49:42 A. National Pollution Discharge
10:49:42 Elimination System.
10:49:50 Q. Is that a permit -- when is that
10:49:52 permit obtained?
10:49:58 A. Permits to discharge to waters are

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required to be renewed every five years.

10:50:14 Q. Is there periodic testing to ensure you are in compliance with the permit?

10:50:20 MR. NUNLEY: With which permit?

10:50:20 MR. KILLORY: For the wastewater treatment plant at Park 500.

10:50:30 A. My department really doesn't test. That's the responsibility of the Park 500 plant.

10:50:40 Q. Do the people at Park 500 who do test report the results to your office?

10:50:46 A. No, they do not.

10:50:54 Q. In your prior answer regarding the transportation of nicotine, you stated that "The DOT rules and regulations for any chemicals or any material that's considered hazardous in which there are six general categories, you follow the rules. I can't specifically sit here and state the specifics around nicotine."

10:51:10 What are the six general categories of hazardous materials that you're referring to?

10:51:18 A. I don't know if I can sit here and name all of them, but you have caustic, you have acids, you have oxidizers, you have poisons. Like I say, I can't remember all of them.

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10:51:40 Q. Does nicotine fall within one of those categories?

10:51:40 A. Yes.

10:51:42 Q. Which one?

10:51:46 A. Nicotine actually may fall in more than one. It falls under certain circumstances in the poison category.

10:51:56 Q. Under other circumstances it's in another category?

10:51:58 A. Under some circumstances it may not even be classified as a poison.

10:52:04 Q. Are there any of the other categories it can be classified in under other circumstances?

10:52:08 A. None that I can sit here and tell you.

10:52:40 Q. What are the circumstances under which nicotine is classified as a poison?

10:52:48 A. I don't -- again, I can't when these circumstances come up, I go get the book, I sit down with the book and I go through the book.

10:53:00 Q. You said there's no reporting of the testing of the wastewater treatment plant to your office by the people at Park 500; is that

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correct?

10:53:08 A. That's correct.

10:53:14 Q. How does your office ensure

10:53:18 continuing compliance with permit regulations?

10:53:20 MR. NUNLEY: At Park 500?

10:53:22 MR. KILLORY: At Park 500, for the

10:53:22 wastewater treatment facility.

10:53:34 A. Park 500 as an operating entity and

10:53:38 permittee, it's their responsibility to ensure

10:53:44 that they comply, and from time to time we might

10:53:44 review their records.

10:53:48 Also, they take samples once a month

10:53:54 and send to the state, and also the state has

10:53:58 always had the right at any time they want to

10:54:02 take samples from the outfall, as well as the

10:54:04 state comes in at least once a year and reviews

10:54:08 the laboratory procedures and to make sure that

10:54:10 things are being done appropriately.

10:54:14 Q. We briefly discussed the DOT Federal

10:54:18 regulations regarding transportation of nicotine

10:54:22 or nicotine containing substances. Are there

10:54:28 state regulations regarding the production or use

10:54:30 of nicotine?

10:54:30 MR. NUNLEY: Objection as to form.

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Compound.

Q. Are there state regulations regarding the use of nicotine?

MR. NUNLEY: Objection as to form. Vague.

Q. Do you understand my question?

A. Are there state regulations regarding the use of nicotine?

Q. I earlier tried "handling," which seemed to me perfectly clear to me, but everybody had trouble with that. Are there state regulations relating to nicotine, let's start with that.

MR. NUNLEY: You mean State of Virginia regulations?

Q. Any state regulations that you're aware of in your duties as director of environmental compliance and engineering.

A. No.

Q. Are there regulations regarding -- state regulations regarding the disposal of nicotine?

A. I'm not sure of that.

Q. When the state conducts testing at

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Park 500 what are they testing for?

A. If they were to do a test, they would test for the parameters in your permit.

Q. Do you know what the parameters are in the permit for the Park 500 facility?

A. No, I do not.

Q. The permit for the Park 500 facility, environmental permit for state regulatory compliance is not within the parameters of the responsibilities of your office?

MR. NUNLEY: Objection as to form.

A. Again, I don't really know what you're asking me.

Q. As director of environmental compliance and engineering, do your responsibilities include ensuring that the Park 500 facility complies with all environmental regulations?

A. Yes.

Q. And how do you do that?

A. From time to time we review their results.

Q. What results?

A. That are contained in their permit.

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10:57:12 Q. The results that are contained in their permit?

10:57:18 A. When you are issued a permit, the permit states specific parameters and amounts in terms of pounds, percents that you must be below or cannot exceed or whatever. So when you're issued a permit your permit outlines very specifically what it is you must comply with.

10:57:44 So when you test, you're testing for those parameters to ensure that you stay within those parameters outlined in your permit. So if we were to go and look at any data from Park 500, it would be that data that pertained to those permit parameters, to see that they were within what the permit required.

10:58:10 Q. What are the items for which the permits set parameters at Park 500?

10:58:16 A. I don't know.

10:58:18 Q. Do you know any of them?

10:58:22 A. Not specifically, no.

10:58:24 Q. Do you know if nicotine is one of the items for which the permits set parameters?

10:58:28 A. No, I do not.

10:58:32 Q. Do you ever review the permits for

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Park 500?

A. No, I have not.

Q. Does anyone in your office review the permits for Park 500?

A. Yes, they do.

Q. Do they report to you?

A. Yes, they do.

MR. NUNLEY: You mean on a general basis or with respect to the review of the permits for Park 500?

Q. Actually I meant in the general basis, do those people report to you?

A. That's correct.

Q. And have those people reported to you with regard to the parameters -- with regard to the permits for Park 500?

A. Are you asking me have they reported to me after they've reviewed the data?

Q. After they've reviewed the data.

A. No.

Q. How about -- you said they had reviewed the permits as well, the data resulting from testing; correct? And there are permits.

MR. NUNLEY: Objection as to form.

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MR. KILLORY: Let's go to the first one.

Q. You described some data. Is that data that results from testing done at Park 500?

A. Yes.

Q. And there are also the permits themselves that set forth the parameters; correct?

A. That's correct.

Q. Am I correct that your prior testimony was that you had reviewed neither the data nor the permits for Park 500?

A. That's correct.

Q. Employees working -- that report to you have reviewed the data, is that correct, from Park 500?

A. That's correct.

Q. Have those employees also reviewed the permits under which Park 500 operates?

A. That's correct.

Q. Are they the same employees who review the permits who then review the data?

A. Sometimes yes. Sometimes no.

Q. Let's start with the employees who

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review in the time period 1982 through February of '84, for example. The employees, the names of the employees who review the data from Park 500.

MR. NUNLEY: Well, objection, Ted. I don't know that it's been established that permits were in place from 1982 through -- the record says '84.

MR. KILLORY: I'm sorry. I misstated.

Q. I meant to say in the last few years. Through March of 1994, the employees who reviewed data from Park 500, the data we've been discussing.

A. Mm-hmm.

Q. Do you know --

A. And your question is?

Q. The names of those employees.

A. Names of the employees? Ethel Tatum.

MR. NUNLEY: Can you spell that name?

THE WITNESS: E-t-h-e-l, T-a-t-u-m.

Q. T-u-l?

A. M. Tatum.

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11:01:58 Q. Any other employees working under you that reviewed the data from Park 500?

11:02:02 MR. NUNLEY: In the March '94 time frame?

11:02:06 Q. Let's say '93-94 time frame.

11:02:10 A. I'm not sure.

11:02:16 Q. Would Ms. Tatum also have reviewed the permits governing the operation of Park 500?

11:02:24 A. For the wastewater plant.

11:02:26 Q. Just for the wastewater plant?

11:02:26 A. Yes.

11:02:28 Q. I was more broadly saying, any permits for Park 500.

11:02:34 A. Ms. Tatum would be responsible for reviewing the wastewater plant.

11:02:44 Q. Would that also be true for -- her review of the data, would it be data limited to the wastewater plant at Park 500?

11:02:52 A. More than likely, yes.

11:03:04 Q. During the -- how far back in time would Ms. Tatum have been the person responsible for reviewing data in permits regarding the wastewater plant?

11:03:16 A. 1992 forward.

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Q. Do you know which month in 1992?

A. No.

Q. Who before Ms. Tatum reviewed the data in permits for the wastewater plant at Park 500? Who would have been responsible for doing that?

A. You've asked me two questions. I'm not sure which one to answer.

Q. Okay.

A. Who was or who would.

Q. Who was.

A. I'm not sure. I don't know.

Q. Do you have any idea who was responsible for doing it?

A. No.

Q. For either data or for reviewing the permits.

A. "Who" would have been the former environmental and safety and health group. But I don't know who specifically was assigned that task.

Q. Is Ms. Tatum part of the environmental safety and health group?

MR. NUNLEY: Currently?

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MR. KILLORY: Was she in 1984 when she was reviewing permits.

MR. KING: '94.

MR. KILLORY: '94, sorry.

A. No. She was part of the environmental compliance and engineering department.

Q. Is the environmental safety and health group, is that part of your office?

A. No, it is not.

Q. Was it part of your office?

A. No.

Q. Ms. Tatum was part of the environmental compliance and engineering department, that is, your office; correct?

A. That's correct.

Q. Were the duties of reviewing data in permits governing the Park 500 facility, were those duties shifted into your department sometime in 1992?

A. The environmental issues were held within the environmental health and safety department until I took this position in June of '91, whereupon there was a division, the

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11:05:42 division being I now was responsible for
11:05:46 environmental compliance and engineering, and the
11:05:48 other group is responsible for environmental
11:05:50 health and safety.
11:05:56 Q. That division occurred when you took
11:05:58 the position in June of '91?
11:05:58 A. That's correct.
11:06:02 Q. The other group is the environmental
11:06:04 health and safety?
11:06:04 A. That's correct.
11:06:12 Q. And who was in charge of -- when that
11:06:14 division occurred in June 1991, who was in charge
11:06:16 of the environmental health and safety group?
11:06:26 A. Stuart Pouliot, P-o-u-l-i-o-t.
11:06:38 Q. So starting in June of '91,
11:06:40 Mr. Pouliot's group would have been responsible
11:06:44 for reviewing the permits and the data governing
11:06:48 the Park 500 facility; is that correct?
11:06:48 MR. NUNLEY: Objection as to form.
11:06:54 A. Not starting.
11:06:56 Q. Would have continued?
11:06:56 A. No.
11:07:00 Q. Okay. He did not start reviewing
11:07:00 that in June of 1991?

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11:07:06 A. Until June of '91, the responsibility for environmental issues was with Mr. Pouliot. In June of '91 forward, that responsibility for environmental compliance is my responsibility.

11:07:24 Q. Maybe you can help me by delineating the lines of responsibility, the division of responsibility between the environmental compliance and engineering office -- is it group or office? Your office, the environmental compliance and engineering versus environmental health and safety. What's the division of responsibility between those two groups?

11:07:46 MR. NUNLEY: Objection as to form.

11:07:50 A. I don't know -- any environmental permits, any environmental reporting, is done by my group now. As far as Mr. Pouliot's other duties, I'm not sure I could effectively articulate what they are.

11:08:08 Q. The permits and reports function you just mentioned now is part of your office; is that correct?

11:08:18 A. That's correct.

11:08:20 Q. In June of 1991, when this division of responsibility first occurred, after you took

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your current position, were permits and reports part of your responsibility, your office's responsibility, or were they under Mr. Pouliot?

MR. NUNLEY: Ted, is your question after the division occurred or immediately prior to the division?

MR. KILLORY: No, after the division occurred.

Q. You mentioned in June of '91, after you took this position, there was a division of responsibilities; correct?

A. That's correct.

Q. And my question is simply, at that time, after the division occurred, was the permit and report function part of your responsibility or Mr. Pouliot's operation?

A. Part of mine.

Q. You don't recall who working under you would have been reviewing the permits and data from Park 500 as part of that permit and report function as of June 1991?

A. No.

Q. Are there several possible people that you can think of, you can't recall which

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one? Or you have no idea?

MR. NUNLEY: Objection as to form. Compound.

Q. You can answer.

A. There may have been no one.

Q. Do you know that for a fact?

A. No, I do not.

Q. But you can't recall the names of anyone you believe would have had that responsibility?

A. Not particularly, no.

Q. My reason for focusing on the date was that you mentioned Ms. Tatum picked up the responsibility sometime in 1992.

A. That's correct.

Q. There's a gap in time from June of '91 to sometime in 1992, as to the individual responsible for reviewing the permits and data for Park 500. But your testimony is, am I correct, that you don't recall who it was, if any, who was reviewing the data and permits for Park 500 during that June '91 through sometime in '92 time period; is that correct?

A. That's correct. Can we take a short

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break?

Q. Sure.

THE VIDEO OPERATOR: We're going off the record. The time on the screen is 11:10:54.

(A recess was taken.)

THE VIDEO OPERATOR: We're back on the record. The time on the screen is 11:24:32.

Q. Mr. Merrill, how many people do you currently supervise in your office?

A. I currently supervise three.

Q. And at the time you took the position in June of '91, how many people were in your office?

A. Approximately seven.

Q. And how many people total in your office now?

A. 14.

Q. And in June of '91, when there were approximately seven in your office, how many did you supervise directly?

A. Two.

Q. Did Ms. Tatum report directly to you?

A. I don't honestly remember.

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11:26:06 Q. If there was a supervisor to whom she
11:26:10 reported in between herself and you, who was that
11:26:12 person?
11:26:14 A. It would have been Bill Apple.
11:26:14 Q. Apple?
11:26:20 A. Apple. A-p-p-l-e.
11:26:24 Q. Is he still in your office?
11:26:28 A. Yes, he is.
11:26:42 Q. Do you prepare any periodic reports
11:26:46 for -- is it Mr. Reed, is that the man to whom
11:26:50 you report, do I have the last name right?
11:26:50 A. Presently, yes.
11:26:52 Q. Do you prepare periodic reports for
11:26:54 Mr. Reed?
11:26:58 MR. NUNLEY: Mr. Killory, do you mean
11:26:58 currently?
11:27:04 MR. KILLORY: That's right.
11:27:04 MR. NUNLEY: Objection as to
11:27:04 relevance.
11:27:04 A. Yes, I do.
11:27:06 Q. In the course of your -- since June
11:27:08 of 1991, have you similarly prepared periodic
11:27:12 reports for the persons to whom you report,
11:27:14 either Mr. Taylor or Mr. Reed?

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11:27:18 A. Yes, I have.

11:27:20 Q. Do any of those reports involve the results of testing at Park 500?

11:27:32 MR. NUNLEY: Objection as to form.

11:27:38 A. Probably do.

11:27:40 Q. Do you retain copies of those reports in your files?

11:27:46 A. Some, yes.

11:27:50 Q. Some yes, some no?

11:27:54 A. I keep them for about a year.

11:27:56 Q. Is that your standard document retention policy, one year?

11:28:00 MR. NUNLEY: Objection as to form. You mean for that type of a document?

11:28:04 MR. KILLORY: For any type of document.

11:28:06 Q. Do you have different document retention policies depending on the nature of the document?

11:28:10 A. That's correct.

11:28:16 Q. For memoranda that you prepare, you keep them for one year, or does it vary?

11:28:22 A. Yes, it does vary. ~~Depend~~ Again -- it depends on what it's specifically for.

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11:28:28 Q. What types of memoranda do you keep for more than a year?

11:28:46 A. Regulatory, legal, project. Those are the ones I can think of.

11:28:50 Q. That sounds like a substantial portion of the memoranda that you would receive; is that correct?

11:28:56 A. No, it's not.

11:28:58 Q. So when you say regulatory, legal, and projects, certain of those memoranda ~~are~~ or -- all regulatory, legal and projects memoranda are retained for more than a year?

11:29:08 A. All retained more than a year.

11:29:20 Q. Do you belong to any professional groups?

11:29:24 MR. NUNLEY: You mean that are work related?

11:29:26 MR. KILLORY: That's right.

11:29:30 A. Yes, we do.

11:29:32 Q. What groups would those be?

11:29:36 MR. NUNLEY: Mr. Killory, let me ask you --

11:29:38 Q. I'm focusing on you individually. And by "professional group," it could be an

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11:29:44 association of environmental engineers, environmental directors. I don't mean to limit the question in that fashion, but that's just to clarify it.

Are there any professional groups of that nature that you belong to, you individually?

A. Any professional groups related to environmental that I belong to?

Q. No, I don't mean to limit it to that. I mean to say, by "professional group," to clarify, that meant you as an individual, not necessarily Philip Morris as a company.

A. I as an individual belong to the American Institute of Chemical Engineers.

Q. Any tobacco related professional groups?

A. That's the only one.

Q. You mentioned earlier that you had not had your deposition taken before; correct?

A. That's correct.

Q. Have you ever testified under oath in a court proceeding?

A. Yes.

Q. Business or personal?

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11:31:02 A. Personal.

11:31:06 Q. Have you ever served as an expert witness?

11:31:08 A. No.

11:31:20 Q. Have you ever been asked for advice from Philip Morris management in connection with any litigation? I'm excluding from that conversations that you had with counsel for Philip Morris.

11:31:40 MR. NUNLEY: Ted, what about a situation where counsel has asked someone to whom Mr. Merrill reports for something and in turn that person at the direction of counsel asks Mr. Merrill for something?

11:31:56 MR. KILLORY: The question is limited to have you ever been asked to do that, includes that situation.

11:32:04 A. Yes, I have.

11:32:06 Q. In connection with what litigation?

11:32:16 A. I don't remember the exact name of it.

11:32:20 Q. The name of the case?

11:32:20 A. Right.

11:32:24 Q. What was the substance of the

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litigation? What was it about?

A. It was an employee who was laid off.

Q. This was an employee under your supervision?

A. No.

Q. Why were you consulted about it?

A. To research certain allegations that were made by the employee.

Q. Have you ever -- any other litigation besides that instance where you have been called upon to give advice to management?

A. None that I can recall.

Q. Have you ever been asked to give advice to Philip Morris management regarding any regulatory enforcement action? And by "action" I mean in the sense of a governmental action, whether a lawsuit, administrative action.

MR. NUNLEY: Objection as to form.

A. Could you rephrase that? I'm not sure what you're asking me.

Q. Sure. I'm focusing on regulatory enforcement actions, and by "action" I mean an action by some regulatory body, whether it be an investigation, a lawsuit, an administrative

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proceeding. Do you understand that universe, what I mean by "regulatory action" in that sense?

A. No.

Q. What don't you understand about it?

A. When you say "regulatory action," I'm not sure what falls in those categories, in terms of the environment.

Q. What regulatory authorities at the state level do you deal with?

MR. NUNLEY: You mean does Philip Morris deal with?

MR. KILLORY: That's right. I'm sorry.

Q. That Philip Morris deals with.

A. At the state level? The Department of Environmental Quality.

Q. Any others?

A. No.

Q. And at the Federal level?

A. The Environmental Protection Agency.

Q. Any others?

A. I don't think so. None that I recall.

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11:35:38 Q. In your time as director of environmental compliance and engineering, have either the Department of Environmental Quality or the EPA commenced any formal action against Philip Morris? And by "formal action," I mean commencing a formal investigation, an administrative proceeding, a lawsuit, other regulatory legal action of that nature.

MR. NUNLEY: Objection as to form. It's compound.

A. The only items along those lines during my time in this position has been an involvement in several Superfund situations.

Q. And what are those Superfund -- let's take them one by one. How many Superfund situations have there been that you've been aware of?

A. Four.

Q. Could you take me through the first one that you're aware of?

A. The first one I was aware of is called Smith's Farm, Bullitt County, Kentucky.

Q. And what was the nature of the Superfund situation involving Smith's Farm?

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MR. NUNLEY: Objection as to form.

A. Smith's Farm was declared a Superfund site, and at one point in time Philip Morris disposed of, in the licensed portion of that landfill, and per Federal regulations, asbestos containing materials.

Q. What were the asbestos containing materials that were disposed of there?

A. Insulation.

Q. Do you know when this was declared a Superfund site?

A. No, I do not.

Q. What has your involvement been in that Superfund situation?

A. My involvement has been to work with the attorneys in an alternate dispute resolution activity.

Q. Has the matter concluded?

A. No.

Q. You have not given testimony in the course of that ADR proceeding?

A. No, I have not.

Q. What was the second of the four Superfund situations?

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11:38:40 A. The second was called Spectron, and
11:38:46 it's in Maryland. And it pertains to four or
11:38:54 five drums of material that were sent there for
11:38:54 disposal.
11:38:58 Q. By Philip Morris?
11:39:00 A. That's correct.
11:39:06 Q. What was that material?
11:39:08 A. I don't recall.
11:39:16 Q. Is there an allegation that it was
11:39:18 improperly disposed of?
11:39:20 A. No. What happens is when a site
11:39:24 becomes a Superfund site, you have joint and
11:39:28 several. So it doesn't matter, for example, as
11:39:32 in Kentucky, those materials were disposed of per
11:39:34 Federal regulations, appropriately and
11:39:36 accordingly to all rules.
11:39:38 So in terms of what Philip Morris
11:39:44 buried in Kentucky, there is no problem. But
11:39:44 because of joint and several, we're playing in
11:39:50 the game. So to my knowledge, Philip Morris has
11:39:54 not really done anything extraordinary as to be
11:39:56 included other than the fact that it's joint and
11:39:58 several.
11:40:00 Q. You mentioned that in connection with

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11:40:02 the Kentucky Superfund site.

A. Yes.

11:40:04 Q. That applies also to the Maryland
11:40:06 site as well?

A. That's correct.

11:40:08 Q. What's the third of the four
11:40:10 Superfund situations?

11:40:12 A. The third one is called Martin
11:40:20 Recyclers. Martin Recyclers recycled lead from
11:40:30 lead acid batteries. At one point in time Philip
11:40:36 Morris sent six automobile batteries to Martin
11:40:40 Recyclers. Martin Recyclers was declared a
11:40:46 Superfund site due to lead contamination and
11:40:50 elevated levels of acid in the soil, in the
11:40:52 groundwater.

11:40:54 And the EPA handled this out of
11:41:00 region 4 in Atlanta, Georgia. And we were
11:41:06 declared a micro de minimis and paid $246, and
11:41:08 that's the end of Martin Recyclers.

11:41:12 Q. Where is Martin Recyclers?

11:41:14 A. Martin Recyclers is north of
11:41:22 Charlotte, North Carolina. It's on Route --
11:41:26 somewhere on Route 6 something or other and Route
11:41:28 29, about 20 miles north of Charlotte.

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11:41:30 Q. How about the fourth Superfund
11:41:32 situation?
11:41:36 A. Actually the fourth one, I don't know
11:41:38 if it was declared an official Superfund. It was
11:41:46 a company in New Jersey who brokered materials
11:41:50 worldwide. What would happen is if you ran a
11:41:54 laboratory, when you get your reagent grade
11:41:58 chemicals, there is a date on there.
11:41:58 In other words, just like with milk,
11:42:02 eggs, butter, cheese, if you go past that date
11:42:04 you shouldn't use it, because no one can
11:42:06 guarantee the efficacy of that material.
11:42:10 So laboratories will clean out those
11:42:18 materials and ship them for disposal. Sometimes
11:42:22 they're not opened. This company in New Jersey
11:42:24 decided, since they weren't opened, they would
11:42:30 broker them to Third World countries. So we
11:42:34 properly removed, manifested and shipped for
11:42:36 disposal these materials.
11:42:40 Unbeknownst to us they were being
11:42:42 sent to this warehouse in New Jersey for
11:42:46 brokerage in Third World countries. There
11:42:48 happened to be a fire in the building, and then
11:42:52 the authorities now learn that materials, and

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some hazardous, were being stored in this building illegally.

So we have two drums that were at that site ultimately, and the State of New Jersey has a fund that pays for cleaning up things like that.

So what the fund ~~cost~~ does is, they then turn around and sue. Again, I don't know that it was declared a specific Superfund site, but because of joint and several, we have to be part of the proceedings.

Q. What were the materials that Philip Morris shipped that got involved in that proceeding?

A. I have no idea.

Q. You said there were four drums, approximately?

MR. NUNLEY: ~~You~~ He said two.

A. Two.

Q. Two, I'm sorry. How large is a drum?

A. I don't know that I've ever seen the drums used to ship those materials. They're approximately the size of a 55-gallon drum. The

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reason I say it's approximately the size of a 55-gallon drum is you're putting ~~it~~ in bottles, and some of it comes in in packages, small packages, and they come in in bigger packages, and it's not just a standard 55-gallon drum.

Q. Do you know from what Philip Morris facility those materials came?

A. Not specifically, no.

Q. Any idea at all as to what the contents of the drums were?

A. I don't know, no.

Q. Who would? Who does?

A. Those items would have been manifested. But this goes back to 1981, '82, so I don't know that we still have the manifest. So I don't know what they specifically were.

Q. Do you know whether it is Philip Morris policy to manifest all materials that it ships by independent shippers?

MR. NUNLEY: Objection as to form. I don't know what you mean by "manifest."

Q. You've been using the word "manifest." I take it to mean to record the shipment. What do you mean by "manifest"?

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11:45:08 A. When you ship a hazardous waste, there is a specific form that must be filled out. Blanks on the form help the person filling it out specify per the DOT rules and regulations what the shipment is, and places for appropriate people to sign them and record other pieces of information.

11:45:26 So for hazardous waste you manifest the transportation of it.

11:45:34 MR. NUNLEY: Mr. Killory, I don't know if you're finished with the Superfund sites, but given at least one and perhaps all are involved in litigation, and to my knowledge have absolutely nothing to do with -- the testimony has absolutely nothing to do with the issues in this case, I'm going to ask that the transcript be given the highly confidential, trade secret protection pending redesignation following the deposition.

11:46:00 MR. KILLORY: My understanding under the protective order is that -- and Vineet, you can confirm -- I believe you have five days to designate whatever portions you want that you contend are trade secret or confidential, and in

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11:46:16 the interim we've been treating it under the
11:46:18 protective order as the entire transcript for
11:46:20 that five-day interim is subject to that
11:46:20 confidential treatment.
11:46:22 MR. NUNLEY: That was my
11:46:24 understanding, too. But I wanted to make it
11:46:26 express on the record.
11:46:28 MR. KILLORY: Absolutely.
11:46:32 Q. Mr. Merrill, when did you begin,
11:46:34 first start preparing for this deposition?
11:46:36 A. Monday of this week.
11:46:38 Q. Did you meet with lawyers for Philip
11:46:38 Morris?
11:46:44 A. Yes, I did.
11:46:46 Q. For how long did you meet with them?
11:46:50 A. From approximately nine to five,
11:46:56 Monday, Tuesday, and from about nine to 2:30
11:46:56 yesterday.
11:47:00 Q. Did you review any documents in the
11:47:04 course of your preparation for this deposition?
11:47:12 A. Not really.
11:47:14 Q. You say "not really." Is there some
11:47:14 doubt in your mind?
11:47:18 A. I had one document, but I didn't

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really review it.

Q. What document is that?

A. I don't remember. That's why I say "not really." I can't even tell you what it was. I didn't really review it. And it was more for demonstration purposes than anything.

Q. Was this a document shown to you by your counsel?

A. Yes, it was.

Q. Mr. Merrill, Philip Morris identified you in its interrogatory answers as one of the most knowledgeable employees about reconstituted tobacco. Is that correct?

A. Yes.

Q. Is that knowledge based on the work experience you outlined in the earlier part of this deposition?

A. That's correct.

Q. Have you had any special training outside of the work experience you outlined to familiarize yourselves -- familiarize yourself with the reconstituted tobacco process?

MR. NUNLEY: Objection as to form. I would think his engineering background is in a

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11:48:40 way specialized training that would assist him in
11:48:42 knowledge of the RL process.
11:48:44 Q. Let me clarify the question. What I
11:48:50 meant was, outside of the educational experience,
11:48:52 training, that you bring to your job, and the job
11:48:54 experience, have there been any other special
11:48:58 programs, as in special seminars on the process,
11:49:02 something outside of your work duties that has
11:49:04 familiarized yourself with the reconstituted
11:49:06 tobacco process?
11:49:06 A. No.
11:49:24 Q. Were you asked to speak on behalf of
11:49:26 Philip Morris to the Food and Drug Administration
11:49:30 officials who toured the Philip Morris facilities
11:49:32 in I believe it was March of 1994?
11:49:36 A. Yes, I was.
11:49:38 Q. Who else accompanied you from Philip
11:49:38 Morris on that FDA tour?
11:49:40 MR. NUNLEY: Let me -- I would ask
11:49:42 for a clarification as to the date.
11:49:46 Q. Do you recall the date of the FDA
11:49:50 tour of Philip Morris facilities?
11:49:52 A. Not the specific date, no.
11:50:18 Q. The question I had asked before was,

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who else accompanied you from Philip Morris on the FDA tour?

MR. NUNLEY: I would like to find out whether that tour was after the discovery cutoff in the case.

MR. KILLORY: I would like to have the reporter mark an exhibit.

(Merrill Exhibit 1 for identification, cover sheet on the stationery of Stephen Parrish dated March 21, 1994, to Ronald G. Chesemore, with attachments.)

Q. Mr. Merrill, the reporter is handing you a document that has been marked as Merrill Exhibit Number 1. It is a document that begins with the Bates stamp PA 420809 and runs through PA 420813. There is the corresponding production numbers 2022878343 through 2022878347.

MR. NUNLEY: Mr. Killory, the copy that I have has a first page, your production number of 420808 and our production number of 2022878342.

MR. KILLORY: I'm sorry. I had omitted the cover. I stand corrected. The first page are the numbers that Chip has just read into

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11:52:04 the record. And that first page is a cover sheet
11:52:08 on the stationery of Stephen Parrish dated March
11:52:12 21, 1994, to Ronald G. Chesemore, associate
11:52:16 commissioner for regulatory affairs, Food and
11:52:20 Drug Administration. Attached to it is a letter
11:52:24 to Mr. Chesemore from Mr. Parrish with a
11:52:30 three-page attachment listing Philip Morris,
11:52:32 U.S.A., Richmond facilities.
11:52:36 Q. Would you take a look at that Exhibit
11:52:36 Number 1, please.
11:52:38 (Witness complies.)
11:54:24 Q. The question pending was, do you
11:54:26 recall who accompanied you on the FDA tour. But
11:54:28 let me ask you another question before that.
11:54:30 Does this Exhibit Number 1 refresh your
11:54:34 recollection as to the date of the FDA tour?
11:54:34 A. Yes.
11:54:38 Q. Did the FDA tour in fact occur as
11:54:42 indicated in this letter, on Tuesday, March 22nd,
11:54:42 1994?
11:54:44 A. Yes, it did.
11:54:46 Q. When you looked at Exhibit Number 1
11:54:48 you consulted what looked like an electronic
11:54:50 calculator type device. Is that a calendar you

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keep?

A. That's correct.

Q. And does that calendar contain -- how far back in time does that calendar go?

A. I just used it to see that the date was indeed on a Tuesday.

Q. That calendar doesn't include your personal calendar of what you did on given dates?

A. Yes, it does.

Q. Would that -- how far back does that go?

A. It goes back to March 22nd, 1994.

Q. What items do you typically record in that calendar?

A. Phone numbers and meeting schedules.

Q. So from March 22nd, 1994, through the present, you should have recorded in there phone numbers and meeting schedules for your calendar?

MR. NUNLEY: Objection as to form.

A. I have a list of phone numbers for people I generally contact, and I apparently -- this thing has -- I thought it wiped it out after every year, just wrote over it, but apparently it

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doesn't.

Q. I would ask that you not wipe out anything for the time being.

MR. NUNLEY: Well, now, wait a minute. What exactly is that, Mr. Killory?

Q. I would ask while this deposition is pending that you not wipe out that calendar. It is an existing document. I don't know whether it's going to be relevant in terms of cutoff dates and fixing dates of other events, but my request is that you simply not delete any other portions of it while this deposition is pending.

MR. NUNLEY: I don't know that there's been any suggestion he's deleted any portion of it.

MR. KILLORY: I didn't suggest there was. He said it went back to March 22nd, 1994. He said he thought he had wiped it out. I was simply just asking that you not wipe out.

Q. I wasn't suggesting you had done anything on purpose at all. My request is simply to preserve it for the time being.

Could you -- the pending question I had before, before we fixed the date, was who accompanied you on the FDA tour. This letter

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11:57:28 indicates that Mr. Burnley will accompany you.
11:57:30 Did he in fact accompany you on that tour?
11:57:32 A. Yes, he did.
11:57:34 Q. Anybody else from Philip Morris join
11:57:36 you?
11:57:40 A. On the second day.
11:57:42 Q. Who was that?
11:57:46 A. Dr. Heretick.
11:57:48 Q. Would you spell that, please.
11:57:48 A. I'm not sure how to.
11:57:56 H-e-r-r-e-t-i-c, something on that order.
11:58:00 Q. Who is Dr. Heretick?
11:58:02 A. He works in R&D.
11:58:08 Q. Anyone else join you on the FDA tour
11:58:08 from Philip Morris?
11:58:16 A. And Dr. Jerry Whidby, W-h-i-d-b-y.
11:58:20 Q. Would you spell that again, please.
11:58:22 A. W-h-i-d-b-y.
11:58:24 Q. The first name was Jerry?
11:58:26 A. Mm-hmm.
11:58:28 MR. NUNLEY: Mr. Merrill, you'll need
11:58:30 to say yes or no so they can take it down. If
11:58:36 you say mm-hmm or nod your head, the reporter
11:58:36 can't get it.

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11:58:40 Q. What's Mr. Whidby's position?
11:58:42 A. I'm not exactly sure.
11:58:44 Q. He is employed by Philip Morris?
11:58:46 A. Yes, he is.
11:58:46 Q. Is he in R&D?
11:58:48 A. Yes, he is.
11:58:50 Q. Is he a scientist?
11:58:50 A. Yes.
11:58:54 Q. And Dr. Heretick as well, is he a scientist?
11:58:56 A. Yes.
11:59:02 Q. Any other Philip Morris employees participate in the FDA tour?
11:59:04 A. I'm not sure.
11:59:10 Q. How many days did the FDA tour consume?
11:59:16 A. Two.
11:59:18 Q. It was the 22nd and the 23rd of March, 1994?
11:59:20 A. That's correct.
11:59:24 Q. How many people from the FDA participated in the tour?
11:59:28 A. Ten.
11:59:30 Q. I would like you to take me through
11:59:32
11:59:36
11:59:42

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that tour in terms of your first day. Did you in fact as the letter suggests meet the people in the operations center, meet the FDA people?

A. Yes.

Q. And where did you proceed to from there?

A. We went to a conference room and sat down and went through an overview of Philip Morris.

Q. Did you show any video or slides at that overview presentation?

A. Overheads.

Q. What was the substance of that overview presentation?

A. I don't remember all of it. Part of it was the different processes, some of the different processes that are used to process tobacco.

Q. Did those processes include the RL production process?

A. Yes.

Q. How about the BL production process? Was that also discussed?

A. I don't remember for sure.

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Q. Did you make a presentation on the RL process?

A. For the FDA, Harold Burnley made the presentation on the RL process.

Q. And what was the substance of Mr. Burnley's description of the process?

MR. NUNLEY: Objection as to form.

Q. What did Mr. Burnley say?

A. Oh, I don't remember exactly what he said. He described the reconstituted process.

Q. You don't recall whether he described the BL process as well?

A. I don't remember exactly, no.

Q. Was that portion of the presentation to the FDA accompanied by overheads or slides or video?

MR. NUNLEY: You mean Mr. Burnley's portion?

MR. KILLORY: The portion describing the RL, which he said was given by Mr. Burnley.

A. I believe it was, yes.

Q. Do you know if those -- was the presentation videotaped?

A. No, it was not.

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12:02:30 Q. Do you know who would have retained the copies of the slides, the overheads? I'm sorry. Was it overheads or slides?

12:02:38 A. It was overheads.

12:02:40 Q. Do you know who retained the copies of the overhead materials?

12:02:46 A. It would have been Mr. Burnley.

12:02:50 Q. Did the FDA people ask questions about the RL process?

12:02:56 A. Yes, they did.

12:02:56 Q. Do you recall what they asked?

12:03:00 A. No, I do not.

12:03:06 Q. No recollection as to the substance of what their questions were focused on?

12:03:08 A. Yes.

12:03:10 Q. What was the substance of what their questions were focused on?

12:03:16 A. Where we added the extra nicotine.

12:03:18 Q. Did you respond or did Mr. Burnley respond?

12:03:22 A. Over the course of the two days, both of us.

12:03:30 Q. So the discussion about RL and where you added nicotine was not limited to this

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12:03:34 presentation in the conference room; it was over the course of the two days?

12:03:36 A. That's correct.

12:03:42 Q. When did you first become aware that you were going to be participating on behalf of Philip Morris on the FDA tour?

12:03:48 A. It was about 3:15 on Monday.

12:03:50 Q. Monday the 21st?

12:03:54 A. The 21st.

12:03:56 Q. The same day the letter went out?

12:03:56 A. Yes.

12:04:00 Q. Who informed you you would be participating?

12:04:02 A. Bill Taylor.

12:04:04 Q. What did he say to you?

12:04:04 A. He said, I have another task for you to do tomorrow. You won't be going back to New York.

12:04:08 Q. Why had you been planning to go back to New York?

12:04:08 A. We were working on the videotape for the one that was handed out at the meeting in March or April, whenever it was.

12:04:14 Q. I'm sorry. Which videotape is that?

12:04:16

12:04:16

12:04:22

12:04:22

12:04:28

12:04:32

12:04:34

12:04:38

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12:04:40 A. This is the seven-minute videotape that was handed out when Philip Morris announced filing suit against ABC.

12:04:56 Q. When you were told by Mr. Taylor around 3:15 that you would be participating in the FDA tour, did you ask any questions?

12:05:14 A. I don't remember any specifically.

12:05:18 Q. Did you make any preparations between then and the morning of the 22nd when the tour commenced?

12:05:24 A. No, I did not.

12:05:28 Q. How did you know what the focus of the FDA tour would be?

12:05:38 A. I had no idea what the focus would be.

12:05:40 Q. Did Mr. Taylor tell you anything beyond the fact that you had this assignment to meet with the FDA people?

12:05:50 A. No.

12:05:52 Q. What's Mr. Taylor's title?

12:05:56 A. As of when?

12:05:58 Q. As of the time he informed you that you would be participating in the tour.

12:06:08 A. Vice president of manufacturing

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technical services.

Q. What is his current title?

A. I'm not sure what his current title is.

Q. He's still employed by Philip Morris?

A. Yes, he is.

Q. Did you make any presentation at the morning session in the conference room with the FDA people on the 22nd?

A. I don't honestly remember.

Q. You don't remember whether you participated in the overview that was accompanied by overhead materials?

A. It was more a discussion than it was really a presentation.

Q. But you mentioned earlier that some overhead materials accompanied the discussion; correct?

A. That's correct.

Q. So that required some advance preparation; correct?

A. No.

Q. Why is that?

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12:07:20 A. What was used for overheads was something that we would typically have. Harold pulled together information and overheads that he thought might be helpful for the FDA, things that we've already had and created.

12:07:34 Q. Did you -- from the time you found out you would be participating in the tour, were you told that Mr. Burnley would also be participating?

12:07:40 A. Yes.

12:07:44 Q. Did you talk with Mr. Burnley at that time?

12:07:46 A. No.

12:07:48 Q. You had no discussions with him before the tour commenced the next day?

12:07:50 A. That's correct.

12:07:58 Q. Did you review any documents of any sort in anticipation of the FDA tour?

12:08:02 A. No.

12:08:14 Q. Did you prepare any documents, handouts, any other kind of materials?

12:08:18 A. For the FDA tour?

12:08:18 Q. For the FDA tour.

12:08:20 A. No, I did not.

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12:08:26 Q. The preexisting overhead materials, what had they been created for?

12:08:32 A. I have no knowledge of why -- what specifically they were created for.

12:08:42 Q. You don't recall whether you made -- you conducted any of the discussion accompanied by these overhead materials?

12:08:48 A. Yes, I did.

12:08:50 Q. Which portions of the discussion did you conduct?

12:08:52 A. I don't remember. Again, it was a discussion rather than a presentation.

12:08:54 Q. But with overhead materials, I assume there's some narration that accompanied materials; is that correct?

12:08:58 A. That's correct.

12:09:02 Q. Did you provide that narration?

12:09:04 A. No, I did not.

12:09:04 Q. Did Mr. Burnley?

12:09:06 A. Yes, he did.

12:09:06 Q. Do you recall the names of any of the FDA officials who participated in the tour?

12:09:16 A. No.

12:09:20 Q. Have you had any contact with them

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since that two-day tour?

A. No, I have not.

Q. Do you know if anyone else at Philip Morris has had contact with those officials since the time of the tour?

A. No, I do not.

Q. How long did the session in the conference room where there was a general overview and then follow-up discussion, how long did that go on?

A. Approximately two hours.

Q. Besides asking where you added the nicotine, what other questions do you recall the FDA people asking?

A. They asked about the stems from the ART process.

Q. What did they ask about the stems from the ART process?

A. They asked was that where we obtained nicotine to put into the RL process.

Q. Did you or Mr. Burnley respond to that question?

A. Yes, we did.

Q. Both of you?

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A. Yes.

Q. What do you recall you saying in response to that question?

A. The answer we responded to the question was no, we did not.

Q. Did you provide any further explanation besides that?

A. Yes, I did.

Q. What did you say?

A. I told them that we had landfilled those stems.

Q. What was your basis for that statement? How did you know that?

A. I was told they were taken to the dump.

Q. Who told you that? I'm sorry. I interrupted you.

A. In subsequent conversation with the FDA, we informed the FDA specifically that those stems were collected, they were pulped or washed, the water basically drained from the stems, the wet stems disposed of and landfilled. And the wash water was fed to the waste treatment plant.

Q. Did they ask where the nicotine was

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in that process?

MR. NUNLEY: Objection as to form.

A. Yes. I don't recall them other than in asking, was that where we got the nicotine, is the only question I remember them asking.

Q. So when you said there was a subsequent conversation in your prior answer, what were you referring to?

A. I was referring to completeness of the explanation to the FDA.

Q. When was that subsequent conversation?

A. On Wednesday the 23rd.

Q. On the second day of the tour?

A. That's correct.

Q. Who had told you that the ART stems were taken to the dump?

A. I don't know that I recall specifically an individual that told me they were gone to the dump.

Q. Are there more than one individual that you can recall who provided you ART stem information?

A. Yes.

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Q. Who are those individuals?

A. Bernard Semp.

Q. Is that S-e-m-p?

A. S-e-m-p.

Q. What is Mr. Semp's position?

A. Retired.

Q. What had been his position before being retired?

A. He had a small group that worked in the processing plants. I don't know what his specific title was.

Q. What was the basis for his knowledge of ART stem disposal?

A. I'm not sure what his basis for -- I'm not sure really what you're asking me.

Q. Did you ask Mr. Semp about ART stems?

A. Yes.

Q. When did you ask him?

A. I don't remember the specific date. Mr. Semp came to see me to check on disposal of these materials.

Q. Was this around the time of the FDA tour or some prior date?

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12:14:48 A. Considerably before.
12:14:50 Q. So the information you got from
12:14:52 Mr. Semp was not gathered in connection with the
12:14:54 FDA tour?
12:14:56 A. Absolutely not.
12:14:58 Q. Do you recall roughly the time when
12:14:58 you would have had this conversation with
12:15:00 Mr. Semp?
12:15:08 A. Sometime probably between late '92,
12:15:12 October, November -- '91, rather, to about the
12:15:18 same time in '92, somewhere in that time frame.
12:15:24 Q. Who else would form the basis for
12:15:26 your knowledge of ART stems?
12:15:28 A. John Whitman.
12:15:36 Q. And Mr. Whitman's position for the
12:15:36 record is?
12:15:40 A. At the time he was site manager, Park
12:15:40 500.
12:15:42 Q. His current position, do you know?
12:15:46 A. General manager, processing plants.
12:15:50 Q. Did you have the conversation with
12:15:54 Mr. Whitman in the same time frame as that with
12:15:54 Mr. Semp?
12:15:56 A. Yes.

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12:15:58 Q. Can you pinpoint it any more specifically?

12:15:58 A. No.

12:16:00 Q. So sometime between late '91 and late '92 you had a conversation with Mr. Whitman; is that correct?

12:16:04 A. That's correct.

12:16:08 Q. And what did Mr. Whitman say regarding ART stems?

12:16:12 A. I don't remember specifically what he said.

12:16:14 Q. In substance.

12:16:16 A. In substance was, we were disposing of these materials appropriately.

12:16:22 Q. Had the disposal -- when you say "appropriately," what do you mean?

12:16:30 A. Put them in the landfill.

12:16:36 Q. Besides Mr. Semp and Mr. Whitman, any other individuals with whom you spoke in connection with ART stem?

12:16:50 A. I think Mickey Annamanthadoo, and I cannot spell it.

12:16:54 Q. I have trouble enough pronouncing it, let alone spelling it. What was Mickey's

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position at the time?

A. I honestly don't know.

Q. Was this in the same time frame, '91, late '91 through '92 time frame?

A. No, it was not.

Q. When was the conversation with Mickey?

MR. NUNLEY: Concerning ART stems --

MR. KILLORY: Concerning ART stems.

MR. NUNLEY: For the record, Annamanthadoo is A-n-n-a-m-a-n-t-h-a-d-o-o.

A. Wednesday the 23rd of March.

Q. So this was in connection with the FDA tour and responding to the questions?

A. That's correct.

Q. And what did you ask -- Annamanthadoo?

A. Annamanthadoo.

Q. Is Mickey male or female?

A. Male.

Q. What did you ask Mr. Annamanthadoo?

A. I asked Mickey to get the wash and disposal records for the ART stems.

Q. Did he do so?

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12:18:22 A. He and I collectively did so.

12:18:34 Q. What are the wash records for the ART stems?

12:18:40 A. The dates and the pounds of which was washed and which was put in the dumpster.

12:18:46 Q. The same materials were washed and then put in the dumpster; is that correct?

12:18:50 A. That's correct.

12:18:54 Q. Were there records of volume of wash produced by this washing process?

12:18:58 A. There were some.

12:19:00 Q. Some?

12:19:00 A. Yes.

12:19:06 Q. But those records were not complete?

12:19:08 A. I have no idea.

12:19:12 Q. How about disposal records? Were there also some disposal records?

12:19:16 A. Only in terms of pounds. When you go to a regular landfill, how many pounds do you have to pay for.

12:19:28 Q. So you have seen landfill records reflecting the disposal of ART stems?

12:19:30 A. No.

12:19:34 Q. I had taken from your prior answer

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that -- did Mickey represent that he had seen landfill records reflecting disposal of the ART stems?

A. No.

Q. What records did Mickey collect in connection with the disposal of the ART stems?

A. In part what I remember was an equipment list of equipment that he put together to assist in washing the ART stems; some records of poundages of what was washed in a given day, week or month; and some tank levels for the tank which the wash water was collected in.

Q. You don't recall anything reflecting landfill disposal records?

A. No.

Q. Anyone else that you spoke to in connection with the ART stems that formed the basis for your answer to the FDA?

A. No.

Q. In your position as director of environmental compliance, had your office been responsible for the ART stem disposal?

MR. NUNLEY: Objection as to form.

A. Can you rephrase that?

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12:21:22 Q. Did ART stem disposal fall within the
12:21:24 responsibilities of your office?
12:21:30 MR. NUNLEY: Same objection.
12:21:36 A. Disposal of any material can fall
12:21:40 within my department.
12:21:46 Q. And do you know whether the disposal
12:21:46 of that particular material, the ART stems, fell
12:21:48 within the responsibilities of your department?
12:21:52 A. As it turned out, no, they did not.
12:21:54 Q. And why is that?
12:21:56 MR. NUNLEY: I think here,
12:21:58 Mr. Killory, that this may involve
12:22:04 attorney-client communications and privileges.
12:22:08 Q. Excluding your -- I'm not sure I
12:22:10 understand, but let's exclude conversations with
12:22:18 counsel. Why is it that it did not fall within your
12:22:18 responsibility?
12:22:24 A. Let me see if I can answer it this
12:22:32 way. Items that typically and historically have
12:22:36 been disposed of in a landfill do not require the
12:22:38 auspices of my department to oversee.
12:22:46 Q. Did you know at the time whether your
12:22:50 office had -- at the time of disposal of ART
12:22:52 stems, whether your office had responsibility for

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12:22:52 that disposal?

12:22:58 A. Could you just read that back?

12:23:02 Q. Sure. Did you know at the time, by "at the time" I mean at the time the disposal was done, whether your office had responsibility for the disposal of the ART stems?

12:23:16 A. My department did not have responsibility.

12:23:18 Q. Did not?

12:23:18 A. Did not.

12:23:20 Q. And did you understand that at the time of the disposal?

12:23:22 A. That's correct.

12:23:28 Q. And you still -- that's your understanding today?

12:23:30 A. That's correct.

12:24:00 MR. KILLORY: Chip, I've just been handed a notice, about five minutes to the end of the tape. I'm flexible as to the time we break. If we take the usual time, we can break right now.

12:24:10 MR. NUNLEY: That's fine.

12:24:12 MR. KILLORY: When can you be back?

12:24:14 MR. NUNLEY: Can we say an hour?

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12:24:16 MR. KILLORY: 1:30, we can resume.

12:24:18 THE VIDEO OPERATOR: We're going off the record. The time on the screen is 12:24:18.

12:24:22 This ends videotape number 1.

(Luncheon recess: 12:24 p.m.)

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